

ISSUE DATE: October 6, 2000

DOCKET NO. E-002/M-00-1169

**ORDER MAKING PRELIMINARY DETERMINATION REQUIRED BY MINN. STAT.
§ 216B.2424, SUBD. 5**

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendraye

Chair
Commissioner
Commissioner
Commissioner
Commissioner

**In the Matter of the Petition of Northern
States Power Company for Approval of a
Power Purchase Agreement with FibroMinn
for
50 MW of Biomass Power**

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PROCEDURAL HISTORY

On August 31, 2000, Northern States Power Company (NSP also known as Xcel Energy) filed a petition for approval of a Purchase Power Agreement (PPA) with FibroMinnesota, LLC, a subsidiary of Fibrowatt LLC, the U.S. subsidiary of Fibrowatt Limited of the U.K. (to be collectively referred to as FibroMinn) for 50 MW of biomass power from a facility using poultry litter as its primary fuel.

On September 1, 2000, the Commission issued a Notice of Comment Period on Preliminary Determination requesting comments relating to the preliminary review by September 19, 2000.

The Notice stated that a comment period on whether the Commission should approve, modify, or disapprove the proposed PPA would be established later, after the preliminary determination is made.

On September 13, 2000, the Energy Division of the Minnesota Department of Commerce (DOC) submitted comments.

On September 20, 2000, the Office of Attorney General's Residential and Small Business Utilities Division (RUD-OAG) submitted comments and a request that the Commission vary Minn. Rules 7829.1400, subp. 7, to accept the comments it had filed one day late.

The Commission met on September 28, 2000 to consider this matter.

FINDINGS AND CONCLUSIONS

I. NSP'S REQUEST

NSP requested that the Commission make a preliminary determination that the power purchase agreement between NSP and FibroMinn meets the pricing criteria of Minn. Stat. §216B.2424, subd. 5 (a) (ii). NSP stated that the purchase price criterion under §216B.2424, subd. 5 (a) (ii) were met, i.e. the average purchase price per megawatt hour over the life of the contract is less than the average purchase price per megawatt hour over the life of the contracts approved by the Commission before April 1, 2000. As part of its filing, NSP provided comparative price data for the FibroMinn, EPS/Beck, and St. Paul Cogeneration PPAs.

II. THE DEPARTMENT'S COMMENTS

The Department stated that it had examined and compared both the nominal annual prices (the prices stated in the contracts) and the real prices (the prices discounted to take into account the time value of money) between the FibroMinn and St. Paul Cogeneration PPAs¹ and concluded that the purchase price criteria under §216B.2424, subd. 5 (a) (ii) were met from both a nominal and real price perspective.

The Department explained, however, that for purposes of this preliminary determination, it had assumed that the pass-through payments allowed under the PPA would be zero over the life of the contract. The Department therefore recommended that a comment period be established to allow the Department and Attorney General's Office to review the PPA and provide a more detailed analysis for the Commission.

III. THE RUD-OAG'S COMMENTS

The RUD-OAG stated that the NSP and FibroMinn PPA appeared to meet the pricing criterion of the statute and recommended that the Commission make a preliminary determination to that effect.

The RUD-OAG also stated, however, that a more detailed review will be necessary before making a final determination as to whether the PPA truly meets the pricing criterion, because the PPA contains a number of provisions for additional project costs to be passed through to NSP and its customers. The RUD-OAG stated that it is pursuing discovery to determine the likely size of the cost pass-throughs and expected megawatt hours, which should be available before the Commission makes its final determination.

¹ The St. Paul Cogeneration PPA was the lower cost project of the two biomass PPAs approved by the Commission.

IV. COMMISSION ACTION

A. Variance to Receive Late-Filed Comments

The RUD-OAG asked the Commission for the variance to allow consideration of comments filed September 20, 2000. Having considered this request, the Commission finds that the requirements for a variance in Minn. Rules 7829.3200 are met.

- Enforcing the letter of the rule by not accepting the RUD-OAG comments would be an excessive burden on the RUD-OAG given the short duration of the lateness involved and the fact that no one was prejudiced by this error.**
- Granting the variance would not adversely affect the public interest, but rather would promote the public interest by having the RUD-OAG's perspective available on the record in this matter to aid the Commission's decision-making.**
- Granting the variance would not conflict with any standards imposed by law.**

B. Preliminary Determination That the Statutory Standard is Met

Based on its review of the record in this matter, including the analyses and recommendations of the Department and the RUD-OAG, the Commission concludes that the average purchase price per megawatt hour over the life of the power purchase agreement between NSP and FibroMinn is equal to or less than the average purchase price per megawatt hour over the life of the contracts approved by the Commission before April 1, 2000 to satisfy the biomass power mandate under Minn. Stat. §216B.2424.

Accordingly, the Commission makes the preliminary determination that the purchase price criteria under §216B.2424, subd. 5 (a) (ii) have been met. In so doing, however, the Commission emphasizes that its review and determination are only preliminary at this point and limited to the price criteria required in Minn. Stat. §216B.2424, subd. 5 (b). The thirty day period prescribed by the statute for this preliminary review necessarily limits the extent of the analysis that could be conducted.

The Commission also clarifies that its preliminary determination is limited to certain aspects of the pricing under the PPA. Many other aspects of the PPA will need to be examined before a final determination can be made whether the overall PPA results in reasonable rates and is in the public interest.

C. Future Proceedings

As to future proceedings in this matter, the Commission believes it would be most administratively efficient (given the variability of circumstances and the scope of issues to be addressed in this matter) to delegate to the Executive Secretary the authority to establish comment periods on the issue of whether the Commission should approve, modify, or disapprove the PPA.

ORDER

1. **Minnesota Rules 7829.1400, subp. 7 is varied to accept the RUD-OAG's September 20, 2000 comments in the record of this matter.**
2. **The Commission makes a preliminary determination that the average purchase price per megawatt hour over the life of the power purchase agreement between NSP and FibroMinn is equal to or less than the average purchase price per megawatt hour over the life of the contracts approved by the Commission before April 1, 2000 to satisfy the biomass power mandate under Minn. Stat. §216B.2424.**
3. **The Executive Secretary is hereby delegated the authority to establish a further procedural schedule for receiving comments on whether the Commission should approve, modify, or disapprove the proposed PPA.**
4. **This Order shall become effective immediately.**

BY ORDER OF THE COMMISSION

**Burl W. Haar
Executive Secretary**

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